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***Testimony to the
Massachusetts Commission to Review Statutes Relative to Implementation
of the School Bullying Law
Western New England School of Law, February 17, 2011***

Attorney General Coakley, Sheriff Bellotti, and the other distinguished members of this Commission:

Thank you for offering me the opportunity to present my views on possible enhancements to the new, extraordinary bullying law designed to protect Massachusetts' youth. I have been working on these serious, life-threatening issues for the past decade. I first began working on them in New Jersey, where I supported the passage of their 2003 bullying law, helped develop the Department of Education's Model Policy, and initiated a statewide program called "New Jersey Cares About Bullying," sponsored by the Attorney General's Office there.

For the past six years, I have worked on school climate improvement issues through the New England Equity Assistance Center (NEEAC), a federally funded technical assistance program at The Education Alliance at Brown University. The ten regional Equity Assistance Centers in the U.S. support K-12 school districts to comply with federal civil rights laws, including the Civil Rights Act of 1964 and Title IX of the 1972 Education Amendments.

I have worked to help districts implement bullying laws in several New England states, including Massachusetts.

I see four major areas of concern:

1. Accountability Gap
2. Overlap of "bullying behavior" and "discriminatory harassment"
3. Emphasis on school climate
4. Family engagement, not family punishment

1. Accountability Gap

First, I have a significant concern about a gap in the current law's

accountability language. While I do not share the view that school employees or administrators should be subject to legal penalties for failing to act on bullying reports they receive, I suggest that district level administrators be required to play a more central role in monitoring the procedures for reporting, investigating and taking action on bullying incidents. Our new Massachusetts law focuses accountability on principals or their designees, *not* on the superintendents or their designees. And herein lies a potentially serious “Accountability Gap.”

By comparison, New Hampshire’s recently passed Pupil Safety and Violence Prevention Law (NH RSA 193-F) specifically mentions the role of the district superintendent or designee as the person to receive reports of “all substantiated incidents of bullying or cyberbullying” and the “Identification, by job title, of school officials responsible for ensuring that the policy is implemented.”

I propose, therefore, that a detailed, step-by-step checklist of actions and responsibilities at both the school and district levels be required to close this “Accountability Gap.” Superintendents must ultimately be accountable for ensuring that no reports are lost between the cracks, that all investigations have been properly carried out, and that effective actions are taken, including informing families and providing disciplinary consequences when appropriate.

2. Overlap of “Bullying Behavior” and “Discriminatory Harassment”

Second, I would like to address my concern about the need to clarify the relationship between “bullying behavior” and “discriminatory harassment.” Last spring, when many districts were working on their policies, there was a lot of confusion about whether “harassment” and the enumerated legally protected classes should, or even could, be mentioned. Yet, for purposes of implementing procedures, carrying out effective professional development, and teaching students about discriminatory language and actions, the need to address “discriminatory harassment” along with “bullying behavior” remains a significant problem.

In late October 2010, the US Department of Education’s Office of Civil Rights, or OCR, released a Dear Colleague Letter that has been a useful tool to clarify the responsibility of school districts to address “discriminatory

harassment,” whether or not it is explicit in their state laws and bullying policies. However, it is not a letter from OCR, but the state law that garners the attention of superintendents, principals, teachers, and parents. I am asking that either the law itself, or the Department of Elementary and Secondary Education, clarify the overlap of “bullying behavior” and “discriminatory harassment.” Students and their families must be assured that the policies and plans required by this fine law address the unique needs of students harassed because of their legally protected class status.

3. Emphasis on School Climate

One area of the new law that educators most appreciate is the need for inclusion of resources and evidence-based curricula for bullying prevention and intervention. I believe, however, that the law focuses too narrowly on bullying curricula. The US Department of Education has moved from funding such curricula under the older model of “Safe and Drug Free Schools” to funding “Safe and Supportive Schools” initiatives, emphasizing data collection. This new language recognizes that creating supportive school climate is the context where safe environments can be achieved. All research-based school climate models include factors such as safety, social-emotional learning, respect for diversity, and parent engagement, among others.

This research clearly shows that positive school climate improves academic achievement and increases civic engagement. To assure our students and families that our schools will be safe and supportive places, and for the full intent of the new law to be carried out, I urge a broader emphasis on improving school climate, rather than a narrow emphasis on bullying curricula.

4. Family Engagement, not Family Punishment

Finally, I will comment on one specific concern of this Commission. Should parents be held criminally responsible for their children’s bullying or cyberbullying? This is a complex area with sparse information and much

emotion. We need evidence-based, culturally competent practices for improving family engagement in schools more than laws to punish parents for not preventing their children from bullying others, not taking away cell phones, or not monitoring Facebook accounts.

There is also a serious equity concern with criminalizing parental behavior in this area. What, for example, about parents and guardians new to our country and culture, perhaps speaking a language other than English? Our schools have great difficulty developing the cultural competence to successfully engage these families in school life. How, then, could such a law be equitably enforced?

Parents, educators and law enforcement professionals face a rapidly changing youth/adult landscape with a widening, inter-generational chasm in technology use and its implications for legal and ethical behavior. The problem is not one of technology. It is a problem of improving school and community climate so that educators, families, and our children engage in dialogue about what is empathetic, supportive behavior. Punishing parents is counter-productive to improving school and community climate.

Thank you for your attention to my four areas of concern. I am happy to answer any questions you may have.